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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,424	05/10/2007	Gary Hopkins SR.	AH126/2005.CRP	7892
7590 David W. Carrithers CARRITHERS LAW OFFICE, PLLC Ste 206 6200 Dutchman's Lane Louisville, KY 40205			EXAMINER SMITH, PRESTON	
			ART UNIT 1782	PAPER NUMBER
			MAIL DATE 12/06/2010	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/579,424

Applicant(s)

HOPKINS, GARY

Examiner

PRESTON SMITH

Art Unit

1782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09/10/2010.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5-11 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 5-11 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/CD)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 5-7,9 rejected under 35 U.S.C. 103(a) as being unpatentable over Morris Kuchenbecker, US-Patent 4,592,914 in view of Hiroki Sasaki, US-Patent 4,835,352.

Regarding claims 5, 7, and 9, Kuchenbecker teaches a container for cooking food in a microwave oven that has an inner tray (see 6 of Fig 1. The tray is open and the food can be transferred from it) that is completely coated on one side with a microwave absorptive material for heating up to brown or crisp the surface of the food in contact with the tray (abstract) and an outer package that the tray is placed (abstract and Fig 1). The inner tray or surface is coated with a metallized layer of polyester film

which is a microwave susceptor material (column 6, lines 54-55). The tray has an inner and outer surface. The outer package has a "peelable seal" (see 8 of Fig 1) and perforations at the top (see 10 of Fig 1) wherein a removable section is peeled back to reveal the perforations that allow water vapor to be vented (abstract).

Kuchenbecker fails to teach the crisping device structure having the claimed inner and outer surfaces wherein the structure is perforated.

Sasaki teaches that bag structures containing a microwave susceptor material that are sealed along the edges (see 6 of Fig 5) are well known in the art. Sasaki teaches that the bag is perforate and in direct contact with food that is to be microwaved wherein the surface is made of a microwave susceptor material (column 1, lines 36-53 and Fig 7). This perforated configuration allows for the steam or other gases to escape that may accumulate between the surface of the food and the contact surface composed of the microwave susceptor material. It would have been obvious to use a bag structure in place of a tray structure inside of the outer package of Kuchnbecker since a bag structure can permit for even crisping all around the food instead of just one side. This would be desirable for foods such as chicken where all surfaces would be desired to be crispy. Additionally this perforate structure would permit for the surfaces in contact with the food to be vented.

Regarding claim 6, it would have been obvious to make the perforations smaller than the food since if this wasn't true, the food would fall through the container.

Claims 8,10-11 rejected under 35 U.S.C. 103(a) as being unpatentable over Morris Kuchenbecker, US-Patent 4,592,914 in view of Hiroki Sasaki, US-Patent 4,835,352 and John R. Fisher, US-Patent 4,911,938.

Regarding claims 8 and 10, Sasaki does not teach sealing the bag around the edges with a heat seal however heat seals are commonly used to seal bag structures and further Fisher teaches that heat seals are commonly used to seal bag structures (see abstract of Fisher). It would have been obvious to seal the bag of the composite invention with a heat seal since this would permit the

Regarding claim 11, the bag of the composite invention is considered to be compatible with a vertical fill automated machine since it could simply be held by hand or with a holding device under one of these devices and filled with food.

Response to Arguments

Applicant's arguments with respect to claims 5-11 have been considered but are moot in view of the new ground(s) of rejection however in response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the

applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PRESTON SMITH whose telephone number is (571)270-7084. The examiner can normally be reached on Mon-Th 6:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571)272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Drew E Becker/
Primary Examiner, Art Unit 1782

prs